

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL BOSTON,	§	
	§	No. 185, 2012
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 91006984DI
Appellee.	§	

Submitted: June 11, 2012
Decided: August 23, 2012

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

O R D E R

This 23rd day of August 2012, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm, it appears to the Court that:

(1) The appellant, Michael Boston, filed this appeal from the Superior Court’s December 3, 2010 order denying his motion for postconviction relief under Superior Court Criminal Rule 61 (“Rule 61”). The appellee, State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Boston’s opening brief that the appeal is without merit. We agree and affirm.

(2) In 1991, Boston pled guilty and was sentenced in a federal district court on charges related to an armed bank robbery in which he participated. In 1992, Boston was tried in the Superior Court on charges arising from his conduct following the bank robbery. After a Superior Court jury trial, Boston was convicted and sentenced. This Court affirmed Boston's convictions on direct appeal.¹

(3) Nearly eighteen years after his convictions were affirmed on direct appeal, Boston filed a motion for postconviction relief under Rule 61. Arguing principles of double jeopardy, Boston claimed that his 1991 guilty plea in a federal district court precluded his 1992 trial in the Superior Court. Boston also alleged related claims of ineffective assistance of counsel.

(4) The Superior Court referred Boston's postconviction motion to a Commissioner for proposed findings and recommendations. By report dated November 15, 2010, the Commissioner found that the double jeopardy claims were without merit and, for that reason, procedurally barred, and that the related claims of ineffective assistance of counsel were unsubstantiated. The Commissioner recommended that Boston's postconviction motion should be denied.²

¹ See *Boston v. State*, 1993 WL 476390 (Del. Supr.) (citing *Pope v. State*, 632 A.2d 73 (Del. 1993)).

² See Del. Super. Ct. Crim. R. 61(i) (listing procedural bars to relief).

(5) Boston filed objections to the Commissioner's report. Upon *de novo* review, the Superior Court adopted the report and recommendation and denied Boston's postconviction motion. This appeal followed.

(6) Having carefully considered the parties' positions on appeal, we conclude that the Superior Court did not err when barring Boston's double jeopardy claims as procedurally defaulted³ and untimely⁴ without exception.⁵ We further conclude that Boston cannot demonstrate that he was prejudiced as a result of any related alleged ineffectiveness of his counsel.⁶

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

³ See Del. Super. Ct. Crim. R. 61(i)(3) (barring a claim not previously raised absent cause for relief from the procedural default and prejudice).

⁴ See Del. Super. Ct. Crim. R. 61(i)(1) (barring claim filed more than three years after judgment is final) (amended 2005 to reduce filing period to one year).

⁵ See Del. Super. Ct. Crim. R. 61(i)(5) (providing in pertinent part that the procedural bar of (i)(3) shall not apply to a colorable claim that there was a miscarriage of justice because of a constitutional violation).

⁶ See *Strickland v. Washington*, 466 U.S. 668, 692 (1984) (holding that a defendant claiming ineffective assistance of counsel must show that counsel's representation was prejudicial).